

**Amendments to the Drawings**

Applicants have amended Figure 3 of the originally filed drawings. Applicants' amendment was made to correct the improper placement of reference numbers 44 and 46. The Replacement Sheet for Figure 3, which is attached to this response following Page 23, correctly identifies placement of reference numbers 44 and 46. Applicants respectfully submit that such amendment does not add new matter and is not presented for reasons of overcoming an objection or rejection.

**Remarks/Arguments**

Claim 1 is amended as indicated above due to a grammatical error. Such amendment does not add new matter and is not presented for reasons of overcoming an objection or rejection.

In addition, Applicants have amended Figure 3 of the originally filed drawings. Applicants' amendment was made to correct the improper placement of reference numbers 44 and 46. The Replacement Sheet for Figure 3, which is attached to this response following Page 23, correctly identifies placement of reference numbers 44 and 46. Applicants respectfully submit that such amendment does not add new matter and is not presented for reasons of overcoming an objection or rejection.

Applicants respectfully request that the Examiner now reconsider the rejections of the remaining claims, 1-16 and 21-24, in light of the following:

I. ALLOWABLE SUBJECT MATTER

Applicants appreciate the Examiner's indication of allowance of claims 17-20.

II. REJECTIONS UNDER 35 U.S.C. §102(b):

The Examiner has rejected claims 1-7, 12, 15, 21 and 22 under 35 U.S.C. §102(b) as being anticipated by Wagner *et al.* (U.S. Patent No. 4,554,437) (hereinafter "*Wagner*").

For a claim to be anticipated under 35 U.S.C. §102, each and every claim limitation must be found within the cited prior art reference and arranged as required by the claim. M.P.E.P.

§2131. Anticipation requires the disclosure in a single prior art reference of each element of the claim under consideration. *In re Dillon*, 919 F.2d 688 (Fed. Cir. 1990).

Applicants respectfully assert that at least the element of "a first heating section disposed within the housing positioned on one side of the conveyor, the first heating section including a first type of radiant heat emitter focusing radiant heat toward the conveyor" cannot be found in *Wagner* as recited in independent claims 1 and 5 of the present application. The Examiner has not cited to any passage in *Wagner* as teaching the specific above-cited claim limitations. The Examiner cites Figs. 2 and 6 and globally cites col. 5, lines 49-64 and col. 6, lines 17-39 *Wagner* as teaching these limitations. Office Action, page 2. The Examiner is respectfully reminded that in order to establish a *prima facie* case of anticipation, the Examiner must provide a single prior art reference that expressly or inherently describes each and every element as set forth in the claim. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631; M.P.E.P. §2131. Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of anticipation in rejecting independent claims 1 and 5. M.P.E.P. §2131.

Applicants respectfully traverse and assert that *Wagner* instead discloses three heating zones along the length of the oven but not a first heating section disposed within the housing positioned on one side of the conveyor, the first heating section including a first type of radiant heat emitter focusing radiant heat toward the conveyor and also a second heating section disposed within the oven housing and positioned on an opposing side of the conveyor from the first heating section, the second heating section including a second type heat emitter focusing radiant heat substantially toward the conveyor as claimed in claim 1.

*Wagner* utilizes a floor section which comprises separate hearth panels or plates which are joined end to end to form a continuous longitudinal hearth or floor surface extending the length of the tunnel. *Wagner*, col. 5, lines 22-29. The hearth plates are preferably made of steel to provide thermal mass, wherein the hearth or floor and roof themselves are heated to predetermined temperatures for direct emission of infrared radiant energy. *Wagner*, col. 5, lines 29-36. Applicants respectfully assert that this configuration and operation of the device is in distinct contrast to that as claimed by Applicants in at least claim 1.

More specifically, *Wagner* utilizes infrared emitters of a panel-like configuration which lie closely beneath and proximate the hearth plates. It is evident that in such a configuration that the IR heating units radiate heat toward and onto the hearth and roof plates which in turn provide the actual heating of food products. Moreover, *Wagner* specifically and distinctly discloses that heating is substantially through only radiation from the hearth surfaces (i.e., the steel hearth plates) and not the IR emitter. *Wagner*, col. 6, lines 42-44. Applicants respectfully assert that this is in distinct contrast to that as claimed by Applicants in at least claim 1.

Applicants further assert that *Wagner* does not disclose "a second heating section disposed within the oven housing and positioned on an opposing side of the conveyor from the first heating section, the second heating section including a second type heat emitter focusing radiant heat substantially toward the conveyor" as recited in claim 1. The Examiner has not cited to any passage in *Wagner* as teaching the specific above-cited claim limitations.

Specifically, *Wagner* utilizes a roof section which comprises separate roof panels or plates. *Wagner*, col. 5, lines 37-48. As with the hearth or floor, the roof panels or plates

themselves are also heated to predetermined temperatures by IR heating units for direct emission of infrared radiant energy. *Wagner*, col. 5, lines 29-36. Applicants respectfully assert that this configuration and operation of the device is in distinct contrast to that as claimed by Applicants in at least claim 1.

More specifically, *Wagner* utilizes infrared emitters of a panel-like configuration which lie closely beneath and proximate the roof panels or plates. It is evident that in such a configuration that the IR heating units radiate heat toward and onto the roof plates which in turn provide the actual heating of food products. Moreover, *Wagner* specifically and distinctly discloses that heating of food products is substantially through only radiation from the roof surfaces (i.e., the steel hearth and roof plates) and not the IR emitter. *Wagner*, col. 6, lines 42-44. Applicants respectfully assert that this is in distinct contrast to that as claimed by Applicants in at least claim 1. Applicants respectfully assert that this is in distinct contrast to that as claimed by Applicants in at least claim 1.

Further, Applicants assert that *Wagner* also does not disclose "a temperature control system connected to the heat emitters of the first heating section and the second heating section in a manner to monitor and selectively control the temperature of each heating section separately from that of the other heating section" as recited in claim 1.

Claims 2-4 each recite combinations of features including the above combinations and thus are not anticipated for at least the above-stated reasons. Furthermore, claims 2-4 recite additional features which, in combination with the features of claim 1 upon which they depend,

are not anticipated by *Wagner*. Thus, *Wagner* does not disclose all of the limitations of claims 2-4 and therefore does not anticipate claims 2-4. M.P.E.P. §2131.

Applicants further respectfully assert, in response to the rejection of independent claim 5, that at least the element of "a first heating section forming a first heating zone disposed within the oven housing positioned on one side of the conveyor, the first heating section including a first type of radiant heat emitter focusing radiant heat toward the conveyor" cannot be found in *Wagner* as recited in independent claim 5 of the present application. The Examiner has not cited to any passage in *Wagner* as teaching the specific above-cited claim limitation. The Examiner cites Figs. 2 and 6 and globally cites col. 5, lines 49-64 and col. 6, lines 17-39 *Wagner* as teaching these limitations. Office Action, page 2. The Examiner is respectfully reminded that in order to establish a *prima facie* case of anticipation, the Examiner must provide a single prior art reference that expressly or inherently describes each and every element as set forth in the claim. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631; M.P.E.P. §2131. Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of anticipation in rejecting independent claim 5. M.P.E.P. §2131.

Applicants respectfully traverse and assert that *Wagner* instead discloses three heating zones along the length of the oven but not a first heating section forming a first heating zone disposed within the oven housing positioned on one side of the conveyor, the first heating section including a first type of radiant heat emitter focusing radiant heat toward the conveyor as claimed in claim 5.

*Wagner* instead utilizes a floor section which comprises separate hearth panels or plates which are joined end to end to form a continuous longitudinal hearth or floor surface extending

the length of the tunnel. *Wagner*, col. 5, lines 22-29. The hearth plates are preferably made of steel to provide thermal mass, wherein the hearth or floor and roof themselves are heated to predetermined temperatures for direct emission of infrared radiant energy. *Wagner*, col. 5, lines 29-36. Applicants respectfully assert that this configuration and operation of the device is in distinct contrast to that as claimed by Applicants in at least claim 5.

More specifically, *Wagner* utilizes infrared emitters of a panel-like configuration which lie closely beneath and proximate the hearth plates. It is evident that in such a configuration that the IR heating units radiate heat toward and onto the hearth and roof plates which in turn provide the actual heating of food products. Moreover, *Wagner* specifically and distinctly discloses that heating is substantially through only radiation from the hearth and roof surfaces (i.e., the steel hearth and roof plates and not the emitter). *Wagner*, col. 6, lines 42-44. Applicants respectfully assert that this is in distinct contrast to that as claimed by Applicants in at least claim 5.

Applicants further assert that *Wagner* does not disclose a second heating section disposed within the oven housing and positioned on an opposing side of the conveyor from the first heating section, the second heating section having an inlet heating zone and an outlet heating zone, each of the inlet and outlet heating zones having a second type heat emitter directing radiant heat therefrom substantially toward the conveyor as recited in claim 5. The Examiner once again has not cited to any passage in *Wagner* as teaching the specific above-cited claim limitations.

Specifically, *Wagner* utilizes a roof section which comprises separate roof panels or plates. *Wagner*, col. 5, lines 37-48. As with the hearth or floor, the roof panels or plates

themselves are also heated to predetermined temperatures for direct emission of infrared radiant energy. *Wagner*, col. 5, lines 29-36. Applicants respectfully assert that this configuration and operation of the device is in distinct contrast to that as claimed by Applicants in at least claim 6.

More specifically, *Wagner* utilizes infrared emitters of a panel-like configuration which lie closely beneath and proximate the roof panels or plates. It is evident that in such a configuration that the IR heating units radiate heat toward and onto the hearth and roof plates which in turn provide the actual heating of food products. Moreover, *Wagner* specifically and distinctly discloses that heating is substantially through only radiation from the hearth and roof surfaces (i.e., the steel hearth and roof plates and not the emitter). *Wagner*, col. 6, lines 42-44. Applicants respectfully assert that this is in distinct contrast to that as claimed by Applicants in at least claim 5. Applicants respectfully assert that this is in distinct contrast to that as claimed by Applicants in at least claim 5.

Further, Applicants assert that *Wagner* also does not disclose a temperature control system connected to the heat emitters of the first heating section and the second heating section in a manner to monitor and selectively control the temperature of each heating section separately from that of the other heating section as recited in claim 5.

Furthermore, claims 6-7, 12 and 15 recite additional features which, in combination with the features of the claim 5 upon which they depend, are not anticipated by *Wagner* for at least the above-stated reasons. Thus, *Wagner* does not disclose all of the limitations of claims 6-7, 12 and 15 and therefore does not anticipate claims 6-7, 12 and 15. M.P.E.P. §2131.



As to claim independent claim 21, Applicants respectfully assert that at least the elements of emitting radiant heat from a first heating zone toward the food product within the oven cavity, wherein the radiant heat is emitted from a first type of heat emitter; emitting radiant heat from an inlet heating zone toward the food product within the oven cavity, wherein the radiant heat is emitted from a second type of heat emitter; and emitting radiant heat from an outlet heating zone toward the food product within the oven cavity, wherein the radiant heat is emitted from a second type of heat emitter cannot be found in *Wagner* as recited in independent claim 21 of the present application. The Examiner has not cited to any passage in *Wagner* as teaching the specific above-cited claim limitations. The Examiner cites Figs. 2 and 6 and globally cites col. 5, lines 49-64 and col. 6, lines 17-39 *Wagner* as teaching these limitations. Office Action, page 2. The Examiner is respectfully reminded that in order to establish a *prima facie* case of anticipation, the Examiner must provide a single prior art reference that expressly or inherently describes each and every element as set forth in the claim. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631; M.P.E.P. §2131. Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of anticipation in rejecting independent claims 1 and 5. M.P.E.P. §2131.

Applicants respectfully traverse and assert that *Wagner* instead discloses three heating zones along the length of the oven but not a first heating section disposed within the housing positioned on one side of the conveyor, the first heating section including a first type of radiant heat emitter focusing radiant heat toward the conveyor and also a second heating section disposed within the oven housing and positioned on an opposing side of the conveyor from the

first heating section, the second heating section including a second type heat emitter focusing radiant heat substantially toward the conveyor as claimed in claim 1.

*Wagner* utilizes a floor section which comprises separate hearth panels or plates which are joined end to end to form a continuous longitudinal hearth or floor surface extending the length of the tunnel. *Wagner*, col. 5, lines 22-29. The hearth plates are preferably made of steel to provide thermal mass, wherein the hearth or floor and roof themselves are heated to predetermined temperatures for direct emission of infrared radiant energy. *Wagner*, col. 5, lines 29-36. Applicants respectfully assert that this configuration and operation of the device is in distinct contrast to that as claimed by Applicants in at least claim 1.

More specifically, *Wagner* utilizes infrared emitters of a panel-like configuration which lie closely beneath and proximate the hearth plates. It is evident that in such a configuration that the IR heating units radiate heat toward and onto the hearth and roof plates which in turn provide the actual heating of food products. Moreover, *Wagner* specifically and distinctly discloses that heating is substantially through only radiation from the hearth and roof surfaces (i.e., the steel hearth and roof plates and not the emitter). *Wagner*, col. 6, lines 42-44. Applicants respectfully assert that this is in distinct contrast to that as claimed by Applicants in at least claim 21.

*Wagner* utilizes a roof section which comprises separate roof panels or plates. *Wagner*, col. 5, lines 37-48. As with the hearth or floor, the roof panels or plates themselves are also heated to predetermined temperatures for direct emission of infrared radiant energy. *Wagner*, col. 5, lines 29-36. Applicants respectfully assert that this configuration and operation of the device is in distinct contrast to that as claimed by Applicants in at least claim 1.

More specifically, *Wagner* utilizes infrared emitters of a panel-like configuration which lie closely beneath and proximate the roof panels or plates. It is evident that in such a configuration that the IR heating units radiate heat toward and onto the hearth and roof plates which in turn provide the actual heating of food products. Moreover, *Wagner* specifically and distinctly discloses that heating is substantially through only radiation from the hearth and roof surfaces (i.e., the steel hearth and roof plates and not the emitter). *Wagner*, col. 6, lines 42-44. Applicants respectfully assert that this is in distinct contrast to that as claimed by Applicants in at least claim 21. Applicants respectfully assert that this is in distinct contrast to that as claimed by Applicants in at least claim 21.

Furthermore, dependent claim 22 recites additional features which, in combination with the features of the claim 21 upon which it depends, is not anticipated by *Wagner* for at least the above-stated reasons. Thus, *Wagner* does not disclose all of the limitations of claim 22 and therefore does not anticipate claim 22. M.P.E.P. §2131.

As a result of the foregoing, Applicant respectfully asserts that each and every claim limitation was NOT found within the cited document of *Wagner*. Therefore, it follows that claims 1-7, 12, 15, 21 and 22 are not anticipated by *Wagner*.

### III. REJECTIONS UNDER 35 U.S.C. §103(a)

The Examiner has rejected claims 8-11, 13, 14, 16, 23 and 24 under 35 U.S.C. §103(a) as being unpatentable over *Wagner* in view of Wilson (U.S. Patent No. 6,075,230) (hereinafter "*Wilson*").

A. Claims 8-11, 13, 14, 16, 23 and 24 are patentable over *Wagner* in view of *Wilson*

1. The Examiner has not provided any objective evidence or source of motivation for combining *Wagner* with *Wilson*.

A *prima facie* showing of obviousness requires the Examiner to establish, *inter alia*, that the prior art references teach or suggest, either alone or in combination, all of the limitations of the claimed invention, and the Examiner must provide a motivation or suggestion to combine or modify the prior art reference to make the claimed inventions. M.P.E.P. §2142. The showings must be clear and particular and supported by objective evidence. *In re Lee*, 277 F.3d 1338, 1343, 61 U.S.P.Q.2d 1430, 1433-34 (Fed. Cir. 2002); *In re Kotzab*, 217 F.3d 1365, 1370, 55 U.S.P.Q.2d 1313, 1317 (Fed. Cir. 2000); *In re Dembiczak*, 50 U.S.P.Q.2d 1614, 1617 (Fed. Cir. 1999). Broad conclusory statements regarding the teaching of multiple references, standing alone, are not evidence. *Id.*

The Examiner admits that *Wagner* does not teach a ceramic heat emitter that has a concave shape with a concave face directed toward the conveyor and focusing the emitted energy substantially toward the conveyor, as recited in claim 8. Office Action, page 2. Further, the Examiner admits that *Wagner* does not teach a ceramic heat emitter wherein the watt density for the second type emitter is within the range of 6 watts per square inch and 39 watts per square inch. Office Action, page 2. Further, the Examiner admits that *Wagner* does not teach a ceramic heat emitter wherein the radiant energy emitted from the ceramic heat emitter is in the range from 2 to 7 micrometers. Office Action, page 2. The Examiner's motivation for modifying *Wagner* with *Wilson* to include the above-cited claim limitations is "that it would have been

obvious to adapt the concave heaters of Wilson to the oven of Wagner depending on the specific types of cooking processes, where a roasting process would require such intensity of radiant heat." Office Action, page 2. The Examiner's motivation is insufficient to support a *prima facie* case of obviousness. The Examiner has failed to provide an objective source for his motivation. Instead, the Examiner is relying upon his own subjective opinion which is insufficient to support a *prima facie* case of obviousness. *In re Lee*, 61 U.S.P.Q.2d 1430, 1434 (Fed. Cir. 2002). Consequently, the Examiner's motivation is insufficient to support a *prima facie* case of obviousness for rejecting claims 13-14. *Id.*

Further, the Examiner's motivation does not address as to why one of ordinary skill in the art with the primary document (*Wagner*) in front of him would modify *Wilson* to in the nature as claimed by Applicants. Simply stating such motivation does not provide any objective reason as to why one of ordinary skill in the art would modify *Wagner*.

2. The Examiner has not presented a reasonable expectation of success when combining *Wagner* with *Wilson*.

The Examiner must present a reasonable expectation of success in combining *Wagner* with *Wilson* in order to establish a *prima facie* case of obviousness. M.P.E.P. §2143.02.

*Wagner* teaches an oven having steel plates (hearth plates and roof plates) that are radiantly heated by infrared emitters of panel-like configuration. Column 5, lines 49-51.

*Wagner* further teaches that these hearth and roof plates heat substantially through only radiation from the hearth and roof plates which are themselves heated with the infrared emitter. Column 6, lines 43-44.

*Wilson* teaches a ceramic heating element to provide uniform radiation output. Column 3, lines 20-22. The Examiner has not presented any evidence that there would be a reasonable expectation of success in modifying *Wagner*, which teaches heating a steel plate (a hearth or roof plate) by way of an IR emitter, with *Wilson*, which teaches a heating element having a ceramic body and a helical heating wire embedded therein. The Examiner must provide objective evidence as to how *Wagner* would be combined with *Wilson*. M.P.E.P. §2143.02. Since the Examiner has not provided such evidence, the Examiner has not presented a reasonable expectation of success in combining *Wagner* with *Wilson*. M.P.E.P. §2143.02. Accordingly, the Examiner has not presented a *prima facie* case of obviousness in rejecting claims 8-11, 13, 14, 16, 23 and 24. M.P.E.P. §2143.02.

3. *Wagner* and *Wilson*, taken singly or in combination, do not teach or suggest the following claim limitations.

Applicant respectfully asserts that *Wagner* and *Wilson*, taken singly or in combination, do not teach or suggest the invention disclosed by Applicants. Furthermore, because the Examiner has relied upon an incorrect factual predicate in support of the rejections, the Examiner has not presented a *prima facie* case of obviousness in rejecting claims 8-11, 13, 14, 16, 23 and 24. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998).

#### IV. CONCLUSION

As a result of the foregoing, Applicants respectfully submit that no new matter has been added and that the Claims as they stand are patentably distinct over the documents cited during the prosecution thereof. Therefore, Applicants respectfully assert that claims 1-16 and 21-24 in

the present application are in condition for allowance, and Applicants respectfully request an allowance of such claims.

With the addition of no new claims, no additional filing fees are due. In addition, Applicant believes that no extension of time is due for filing this response. However, if an extension of time is due, the Director is hereby authorized to charge any fees to Deposit Account Number 23-2426 of WINSTEAD SECHREST & MINICK P.C.

If the Examiner has any questions, comments or would like to discuss issues concerning this response or the present application in general, Applicants respectfully request that the Examiner call Applicant's attorney at the below listed number if the Examiner believes that such a discussion would be helpful in resolving any remaining issues.

Respectfully submitted,  
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